THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 12709 OF 2005

DATED: 29-08-2005

Between

N. Thiruvengadam Chetty, S/o Chandramani Chetty,

Aged about 55 years, Narayanavaram Village & Mandal,

Chittoor District.

..... PETITIONER

And

1. The Dy. Commissioner (CT),

Chittoor Division, Chittoor District and others.

..... RESPONDENTS

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ORDER: (per Sri B. Sudershan Reddy, J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India challenging the penalty orders dated 30-03-2005 passed by the 1st respondent for the year 2000-2001 in purported exercise of the power under Section 7-A(2) of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act').

In the impugned order, the 1st respondent having referred to the final assessment orders, observed that exempted turnover *inter alia* consists of Rs.16,50,000/- relating to the purchase of groundnuts which are taxable at the point of last purchase in the State of Andhra Pradesh. The petitioner – assessee was accordingly allowed exemption on the said turnover on the ground that the relevant groundnut seeds were sold to the registered dealers of Andhra Pradesh. The sum and substance of the order is that the documents upon which reliance was placed by the assessee

before the assessing authority were not genuine. The stock was sold in favour of non-existing dealers in the year 2000-2001 and therefore, they are to be treated as fictitious sales. It is further alleged that the petitioner did not provide the details of any identifiable and real dealer as such. Therefore, it was proposed to withdraw the exemption on the said turnover and to impose tax and penalty.

The question that falls for our consideration is whether the 1st respondent has jurisdiction to pass the impugned order. The question is not *res integra* but squarely covered by the decision rendered by this Court in ***Sanmathi Udyog Vs. C.T.O*** wherein this Court having adverted to the relevant provisions of the Act held that the power thereunder can be exercised "only by the assessing authority. Assessing authority is defined to mean any person authorised by the State Government or by any other authority empowered by the Government in this behalf, to make any assessment in such area or areas or the whole of the State of Andhra Pradesh". There is no dispute that the assessing authorities are notified under G.O.Ms.No.1091, Revenue,
dated 10-06-1957 read with G.O.Ms.No.728, Revenue,
dated 14-07-1970. The same notifications remain in operation even as on today. Admittedly, the Deputy Commissioner is not one of the notified assessing authorities.

In the very same judgment, the argument advanced before us by the learned Special Standing Counsel based on Section 14(4) (C) of the Act which lays down that the power conferred by sub-section (4) (C) on the assessing authority may be exercised by any of the authorities higher than the assessing authority including the Deputy Commissioner and therefore, the order does not suffer from any jurisdictional errors has been rejected. This Court took the view that exercise of the power under sub-section (2) of Section 7-A of the Act by the higher authorities would virtually deprive the assessee of its legitimate right to prefer appeal as provided for under the provisions of the Act against the orders of the assessing authority. No other question arises for consideration.

For the aforesaid reasons, we are of the view that the impugned orders reviewing

the penalty is beyond the competence of the 1st respondent – Deputy Commissioner. The impugned order is accordingly quashed. This order, however, shall not preclude the competent authority to proceed against the petitioner in accordance with law, in which event the matter may have to be decided on its own merits.

The Writ Petition is accordingly allowed.

(B. Sudershan Reddy, J)

29..08..2005

(S. Ananda Reddy, J)

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